

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

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**BROWNING FERRIS INDUSTRIES OF  
CALIFORNIA, INC. d/b/a BFI NEWBY  
ISLAND RECYCLERY AND FPR-II, LLC  
d/b/a LEADPOINT BUSINESS SERVICES,  
A JOINT EMPLOYER**

**and**

**Case No. 32-CA-160759**

**SANITARY TRUCK DRIVERS AND  
HELPERS LOCAL 350, INTERNATIONAL  
BROTHERHOOD OF TEAMSTERS**

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**CHARGING PARTY’S MOTION TO RECUSE MEMBER EMANUEL**

Charging Party, Teamsters Local 350, hereby brings this motion to recuse Member Emanuel from participating in any way in the instant matter on the grounds that his participation constitutes a conflict of interest in violation of Executive Order 13770 and the federal Code as Member Emanuel’s former law firm represents a party in this matter.

Members of the NLRB are executive branch employees bound by two sets of ethical standards: the Standards of Ethical Conduct for Employees of the Executive Branch established in Title 5 of the Code of Federal Regulations, and the Ethics Commitments by Executive Branch Appointees set forth by Executive Order 13770.

Executive Order 13770 specifically prohibits executive branch employees, for a period of two years from the date of appointment, from “participat[ing] in any particular

matter involving specific parties that is directly and substantially related to [her or his] former employer.” Ex. Order 13770, 82 Fed. Reg. 9333 (Jan. 28, 2017). A matter is “[d]irectly and substantially related” if “the appointee’s former employer or a former client is a party or represents a party.” *Id.* “Former employer” is any person “for whom the appointee has within the 2 years prior to the date of his or her appointment served as an employee, officer, director, trustee, or general partner.” *Id.* The Code imposes the same restriction for a one-year period.<sup>1</sup>

Prior to his appointment the Board, Member Emanuel was a shareholder with Littler Mendelson, P.C. Member Emanuel was sworn in as a member of the Board on September 26, 2017, thus he is barred until September 26, 2019, from participating in any matter where his former employer represents a party. Leadpoint, a party in this matter, is represented by Member Emanuel’s former law firm. Thus, Member Emanuel may not participate in this remand.

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<sup>1</sup> While the Code provides for a one-year bar, Member Emanuel should have placed this case on his recusal list before being sworn in given that it was pending in the Court of Appeals at that time and the Board had authority to direct the litigation of the case and, in fact, exercised that authority within one year of the start of Member Emanuel’s service. If a Member is recused from participating in any case at the start of his or her service, he or she remains recused, even after the running of the one- or two-year period. Any other construction would permit obvious evasion of the restrictions by the agency simply holding the case until the periods run. Moreover, the Code requires government employees to “endeavor to avoid any actions creating the appearance of violating the law or the ethical standards set forth in this part.” 5 C.F.R. § 2635.101(b)(14). An employee “should not participate” in any matter where “the employee determines that the circumstances would cause a reasonable person with knowledge of the relevant facts to question his impartiality in the matter,” unless a designated agency official is informed of the appearance problem and gives his or her authorization. *Id.* § 2645.502. A reasonable person with knowledge of the facts would conclude that Member Emanuel’s impartiality was compromised in this case when he assumed his seat, after one year, now and for as long as the case is pending.

Any participation by Member Emanuel would be a flagrant violation of Executive Order 13770, given that the Inspector General already addressed the issue in a February 9, 2018, memorandum, finding that Member Emanuel's participation in the Board's decision in *Hy-Brand Industrial Contractors, Ltd.*, 365 NLRB No. 156, was a conflict of interest and a "serious and flagrant problem" because *Hy-Brand* constituted the same "particular matter" as the instant case. The conflict now posed is even more direct, serious and flagrant.

For the above-described reasons, the Charging Party, respectfully requests that Member Emanuel be recused from the instant matter.

**DATED AT** Oakland, California, this 9th day of May 2019.

Respectfully submitted,

/s/ Susan K. Garea

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## CERTIFICATE OF SERVICE

The undersigned hereby certifies that on May 9, 2019, a copy of the foregoing CHARGING PARTY'S MOTION TO RECUSE MEMBER EMANUEL in NLRB Case 32-CA-160759 was served by electronic mail on the following case participants:

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